olina, C. & O. R. Co. v. *Unaka Springs Lumber Co.* (Tenn.), 170 S. W. 591.

A railroad can not contract in derogation of its duty to the public as a common carrier. *St. Joseph, etc., R. Co.* v. *Ryan*, 11 Kan. 603; *Pacific R. Co.* v. *Seely*, 45 Mo. 212. It would seem that a contract by a railroad, exempting it from liability for loss by fire caused by the negligent operation of its engines, on the main track would come within this rule as opposed to public policy. *Thomason* v. *Kansas City, etc., R. Co.*, 122 La. 995, 48 South. 432. But the contrary has been held. *Mayfield* v. *Southern Ry.*, 85 S. C. 165, 67 S. E. 132.

When a railroad is not acting in its capacity as a common carrier, it has the same rights of contract as other corporations or persons, and may therefore contract for immunity from liability for the negligence of itself or servants. *Missouri, K. & T. R. Co.* v. *Carter*, 95 Tex. 461, 68 S. W. 159. Thus a railroad may contract with an express company that it shall not be liable for injuries to any of the express messengers due to the negligence of the railroad. *Baltimore & Ohio, etc., R. Co.* v. *Voight*, 176 U. S. 498. Where a railroad leases a part of its right of way for the erection of buildings thereon, an exemption from liability as to them for loss by fire caused by the engines of the railroad is valid. *Hartford Ins. Co.* v. *Chicago, etc., R. Co.*, 175 U. S. 91. And since a railroad in constructing a spur track is doing something that it is not bound to do by virtue of its character as a common carrier, it may validly exempt itself from liability for loss by fire caused by operations on the spur track, as such a contract does not operate to the prejudice of the public. *Mann* v. *Pere Marquette R. Co.*, 135 Mich. 210, 97 N. W. 721; *Mayfield* v. *Southern Ry., supra.* And the same rule applies where a railroad, under no obligation to continue the maintenance of a side track, but agrees to do so, is released from liability for loss by fire. *Porter* v. *N. Y., N. H. & R. Co.*, 205 Mass. 590, 91 N. E. 875.

The doctrine of the principal case appears to be sound, but such exemptions should be held void as contrary to public policy if they extend to fires caused by engines operating on the main track and in no way connected with the spur track. *Thomason* v. *Kansas City, etc., R. Co., supra.*

COMMON CARRIERS—PASSENGERS—DUTY TO AWAKEN AT DESTINATION.—The plaintiff, a passenger on the train of the defendant carrier, notified the conductor that owing to his physical condition he might possibly fall asleep. The conductor promised accordingly to awaken him at his destination but failed to do so. As a consequence the plaintiff was carried past his station and suffered inconvenience therefrom. *Held*, the defendant is liable. *Gilkerson* v. *A. C. L. R. Co.* (S. C.), 83 S. E. 592. See NOTES, p. 379.

CONSTITUTIONAL LAW—PEONAGE—LABOR CONTRACTS.—A statute provided that a person fined upon conviction for a misdemeanor, might confess judgment with a surety in the amount of the fine and costs, and might agree with the surety, in consideration of the latters payment of the

confessed judgment, to reimburse him by working for him upon terms approved by the court, and that upon a breach of the contract of service, the convict should be liable to rearrest; a new prosecution and a new fine for the breach. *Held*, the statute is unconstitutional, since its operation results in a condition of peonage forbidden by the Federal Statutes. *United States* v. *Reynolds*, 35 Sup. Ct. 86. See NOTES, p. 385.

CONTEMPT—WHAT CONSTITUTES CONTEMPT.—The defendant, who was not an officer of the court, did acts in furtherance of a conspiracy to bring a baseless suit. He did not bring the suit, nor do any thing after suit was brought. The suit was dismissed before trial. *Held*, the defendant is not guilty of contempt. *Melton* v. *Commonwealth* (Ky.), 170 S. W. 37.

Direct contempt is some objectionable or disturbing act committed in the presence of the court. See *Ferriman* v. *People*, 128 Ill. App. 230; *Neely* v. *State*, 98 Miss. 816, 54 South. 315, 33 L. R. A. (N. S.) 138, 27 Ann. Cas. 281. Constructive contempt is some act not done in the presence of the court, but which tends to obstruct the administration of justice or bring the court into disrepect. See *In re Dill*, 32 Kan. 668, 5 Pac. 39, 49 Am. Rep. 505; Ex parte *Clark*, 208 Mo. 121, 106 S. W. 990, 15 L. R. A. (N. S.) 389. The bringing of a fictitious suit is a contempt of court. *Coxe* v. *Phillips*, Hardw. 237. See *Lord* v. *Veazie*, 8 How. 251; *Smith* v. *Junction R. Co.*, 29 Ind. 546. One who carriers on a pretended controversy by counsel is guilty of contempt. See *Cleveland* v. *Chamberlain*, 66 U. S. 419. Publication, even before indictment, of matter tending to prevent a fair trial in a future criminal prosecution has been held to be contempt. *Rex* v. *Parke*, L. R. 2 K. B. (1903) 432. The defendant's act in the principal case undoubtedly comes within some of the broad definitions of constructive contempt adduced by the courts. But it is the policy of the law not to extend proceedings for constructive contempt to cases not coming within the established rules. See *Haskett* v. *State*, 51 Ind. 176. This seems due to the fact that the proceeding is a summary one, and that there is no jury trial. The case of *Rex* v. *Parke*, *supra*, seems to be the only case holding an act done before any judicial proceedings are instituted to be contempt. In that case the defendant had published statements to the effect that one then under arrest for an indictable offense was of bad character and had been guilty of criminal acts in the past. The publication of such matter would seem to be extremely detrimental to a fair trial in a criminal case, and for this reason, the holding in *Rex* v. *Parke*, *supra*, seems eminently sound, but it would appear to rest upon its own peculiar facts, and not to be authority for extending its doctrine beyond cases of that class.

CORPORATION—STATUTORY LIABILITY OF STOCKHOLDERS—SUBROGATION.—A State Constitutional provision made stockholders in banks liable to depositors for a sum equal in amount to their stock, over and above the par value of the same. A bank failed, and the stockholders were compelled to make payments to the depositors under the above provi-